

Order for Protective Custody

Child Not Under Court Jurisdiction

MCR 3.963 | MCL 712.14a, 712A.14b | SCAO Form JC 05b

Michigan law authorizes a law enforcement officer to take a child into protective custody, without a court order, under certain exigent conditions. To effectuate the transfer of the child to DHS for placement and care, the court must issue a protective custody and placement order. Similarly, to take a child into protective custody, DHS must petition the court for a protective custody and placement order. Follow these procedures for an initial removal request when the child is not under court jurisdiction. (For a removal request for a child for whom the court has already attained jurisdiction, see the Emergency Removal bench card.)

When to Use This Bench Card

DHS petitions the court for a placement order after law enforcement takes a child into protective custody without a court order.

DHS petitions the court for an ex parte removal and placement order for a child pending the preliminary hearing.

Procedural Issues

If the court is closed, the on call jurist may enter an ex parte removal and placement order upon receipt of a written petition or affidavit of facts. The petition/affidavit and order may be exchanged electronically.

The court may authorize entry into a specified premises to remove the child as part of the removal order.

Was legally sufficient notice given to the parties?

The court must inquire whether a family member is available to take custody of the child pending the preliminary hearing; and whether there was a central registry clearance and criminal history check initiated.

Inquire if the child is an Indian child. See the ICWA/MIFPA bench card.

If there is only one respondent parent, what is the status of the other parent? What specific steps has the agency taken to locate/engage the other parent?

★ Required Judicial Findings/Orders

Determine if the child should be placed in protective custody pending the preliminary hearing.

Protective Custody Standards (see above):

- Substantial risk of harm and immediate removal is necessary.
- Contrary to the welfare of the child to remain home.
- Reasonable efforts were made to prevent or eliminate need for removal.

Include case specific facts to support contrary to the welfare and reasonable efforts findings. (Federal funding compliance.)

Place child with DHS for care and supervision.

Order the parent, guardian or custodian to provide DHS with information regarding child's medical providers and to sign a release for child's medical records.

Schedule preliminary hearing within 24 hours.

Protective Custody Standards MCL 712A.14b

Upon receipt of a petition electronically or otherwise, a judge or referee may issue a written ex parte order authorizing DHS to immediately take a child into protective custody and place the child pending a preliminary hearing if the court finds all of the following:

- There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal is necessary to protect the child's health and safety.
- The circumstances warrant issuing an ex parte order pending the preliminary hearing.
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- No remedy other than protective custody is reasonably available to protect the child.
- It is contrary to the welfare of the child to remain in the home.

Contrary to the Welfare to Remain in the Home

Federal funding regulations require this finding to be made in the first court order authorizing removal.

Is it contrary to the child's welfare to remain in the home?

What specific conditions make the home an unsafe place for the child, requiring removal?

Reasonable Efforts to Prevent Removal

Federal funding regulations require this finding be made within 60 days of removing the child from home.

Has the agency provided reasonable efforts (or active efforts in the case of an Indian child) to prevent the child's removal from the home?

- Reasonable efforts are not required if aggravated circumstances exist. MCR 3.965(d)(2)

What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services related to the safety threat?